

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

I.T.R. No. 560 of 1995

DATE OF DECISION: 6.7.2007

The Commissioner of Income-tax, Patiala

...Applicant

Versus

M/s Bhawani Plywood Pvt. Ltd., Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjeev Bansal, Advocate,
for the revenue.

Mr. Sanjay Bansal, Senior Advocate, with
Mr. Parvesh Saini, Advocate,
for the assessee.

JUDGMENT

M.M. KUMAR, J.

The revenue has challenged order dated 28.3.1994, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, in ITA Nos. 809 and 810/Chandi/92, relating to the assessment year 1990-91. It has been claimed that the following substantive question of law would arise for determination of this Court:-

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that prima facie adjustment made by the Assessing Officer u/s 143(1)(a) of the Income-tax Act by disallowing the assessee's

claim for deduction in respect of investment deposit account at Rs. 63,400/- was not sustainable in view of the explanation furnished by the assessee alongwith his application filed u/s 154 of the Act?”

The facts as flow from the statement of the case are that the Assessing Officer had completed the assessment of the assessee under Section 143(1)(a) of the Income-tax Act, 1961 (for brevity, ‘the Act’) on 16.7.1991. The claim of the assessee on account of investment deposit, amounting to Rs. 63,400/- by way of prima facie adjustment, was rejected on the ground that the assessee did not file a copy of audit report with its return. The assessee also failed to persuade the Assessing Officer for rectification of the order and his application filed under Section 154 of the Act was rejected on 12.8.1991. The assessee filed an appeal before the Commissioner of Income-tax (Appeals) but failed. The assessee was, however, able to persuade the Tribunal by showing that the firm had explained the reason for non-filing of the audit report, in its reply dated 5.8.1991. The assessee was able to explain to the Tribunal that the audit report could not be filed along with the return because of the default committed by the auditors of the Company. The Tribunal has held that the plea of the assessee should have been accepted by the Assessing Officer because the audit report was actually prepared on 28.3.1990 by the auditors, much before filing of the return and on account of mistake the same could not be filed along with the return in Form 3A. Therefore, the Tribunal has held that prima facie

adjustment made by the Assessing Officer under Section 143(1)(a) could not be sustained.

Mr. Sanjay Bansal, learned senior counsel for the assessee at the outset has submitted that the controversy stand settled by a Full Bench judgment of this Court in the case of **C.I.T. v. Punjab Financial Corporation, (2002) 254 ITR 6**, wherein it has been held that the provisions of Section 32AB(5) of the Act are not mandatory and the Assessing Officer has the discretion to entertain the audit report even though the same was not filed with the return by granting benefit of the deduction to the assessee in terms of Section 32AB(1) of the Act.

Mr. Sanjeev Bansal, learned counsel for the revenue has not been able to point out any distinguishing feature from the facts of the present case.

In view of the above, nothing survives for determination of this Court as the question stand answered against the revenue by the Full Bench of this Court. Accordingly, the reference is disposed of.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 6, 2007
Pkapoor